

## GENERAL TERMS AND CONDITIONS OF DELIVERY AND SERVICES OF ENDRESS+HAUSER COMPANIES IN SWITZERLAND

### 1 SCOPE

Unless differing conditions have been agreed upon in writing, all deliveries of goods and products (hereinafter jointly „Goods“) and services of the Swiss Endress+Hauser companies<sup>1</sup> are governed solely by these General Terms and Conditions of Delivery and Services (hereinafter “Terms and Conditions”).

We may change these Terms and Conditions unilaterally at any time with legal effect for both parties. We publish the current version on our homepage ([www.ch.endress.com](http://www.ch.endress.com)).

The customer’s terms and conditions of business are valid only to the extent that we have confirmed them in writing.

### 2 OFFERS

Our offers are revocable and not binding.

The customer’s orders are binding for the customer for 15 days, calculated from the date of the order’s arrival at our place of business.

Contracts covered by these Terms and Conditions first come into being through our written confirmation of the order („order confirmation“). Fax and e-mail satisfy this requirement.

The technical data, illustrations, drawings, weights and dimensions accompanying the offer are binding only to the extent that we have confirmed this in writing.

We reserve the right to make technical changes.

Suitability for a specific use assumed by a customer is solely the customer’s responsibility.

### 3 DELIVERY DEADLINE

Unless a delivery deadline agreed upon by fax or e-mail exists („Agreed Upon Delivery Deadline“), delivery deadlines and dates, as well as delivery delays we report, are only estimates without legal force. Correspondingly, with the reservation of force majeure according to Section 12, delays in delivery give the customer no rights to rescind the contract or to assert other claims.

The agreed upon delivery period begins, at the earliest, when the contract confirmation is sent, but not before all details concerning the execution of the contract have been settled and all documents and authorizations to be supplied by the customer, as well as any advanced payment to which has been agreed have been received. The delivery deadline has been met when the

Goods have been delivered in time (see Section 5).

The customer’s modification requests extend the delivery period appropriately until we have evaluated their feasibility and for the period of time necessary to incorporate the new instructions into the manufacturing process.

If a delivery was delayed under an Agreed Upon Delivery Deadline, our liability is limited to a maximum of 0.5% of the contract value of the delayed Goods per completed week of delay. Our maximum liability in such cases is 5% of the contract value of the delayed Goods. Written notification by the customer is required before delay of delivery begins.

### 4 PARTIAL DELIVERIES

We have the right to make reasonable partial deliveries.

### 5 SHIPMENT AND ASSUMPTION OF RISK

As a rule, delivery takes place based on the terms of delivery agreed upon and defined in the order confirmation (namely INCOTERM).

Unless specific terms and conditions of delivery have been agreed and confirmed by us, the customer assumes risk as soon as we have turned the Goods over to the carrier, or, should shipment be delayed for reasons that are not our fault, as soon as we have notified the customer that the Goods are ready to ship.

Should delivery be delayed due to circumstances that are not our responsibility,

- we have the right to store the Goods at the customer’s expense (we will charge at least 0.5% of the invoiced value of the stored Goods monthly for storage in our applicable plant; for storage at a third party’s premises, the applicable storage costs),
- we have the right, after an appropriate extension has been granted and this extension has expired without action by the customer, to withdraw from the contract and demand claims for damages instead of performance,
- in particular, the customer must bear the expenses and risks arising from his failure to punctually carry out instructions or to take care of formalities that are his responsibility.

### 6 PRICES

Unless other terms have been agreed upon in writing, by fax or e-mail, prices are understood to be valid from our applicable supply depot, and in particular include neither packaging, transport costs, insurance, nor the applicable value added

<sup>1</sup> These terms and conditions are not applicable to any transactions between affiliated companies of the Endress+Hauser Group.

tax. We are entitled to reasonable price increases when the material and labor costs used to calculate the price have significantly increased since the order was accepted.

## 7 PAYMENTS

Unless other terms have been agreed upon in writing, our invoices are due within 30 days after the date of the invoice.

Should payment not be punctual (value credited to our account) and complete, the customer is, even without being notified thereof, in delay of payment. Delay of payment has the following consequences:

- The customer must pay default interest of 8 percent above the base interest rate of the Swiss National Bank applicable at this time or of at least 10% per annum, whichever is greater. In addition, the customer must reimburse us for all expenses associated with the delay of payment, e.g., expenses for notification and legal expenses.
- We may require payment in advance or collateral before further performance. This term also applies when there is no delay of payment, but when justified doubt in the customer's ability to pay exists.
- Upon written notice we may withdraw from the affected as well as from all not-yet-discharged individual transactions without compensation. Fax and e-mail satisfy the requirement that notification be in writing.
- All not-yet-due invoices for contracts from which we have not withdrawn become due immediately, even when the delay in payment does not apply to these contracts.

## 8 RETENTION OF TITLE

The Goods remain our property until the price and all costs associated with the delivery have been paid in full.

We are authorized and empowered to register retention of title with the competent agency in the applicable location at any time. Upon request, the customer must assist in registration.

The customer must ensure that the delivered Goods are maintained and appropriately insured for the duration of retention of title.

## 9 OBLIGATION TO INSPECT; NOTIFICATION OF DEFECTS; ACCEPTANCE OF THE GOODS

The customer must inspect the delivered Goods for freedom from material defects, completeness, and identity with the ordered Goods immediately after arrival and must notify us in writing and in details of any obvious defects for which we assume warranty immediately, but not later than one week after receipt of the Goods. The customer must notify us of hidden defects in writing

and in detail immediately after their discovery. Otherwise the Goods are considered to have been approved by the customer.

Should the customer have approved the Goods, all of the customer's warranty rights expire at the latest one year after the Goods have been delivered.

The terms of this section apply analogously to all other customer complaints, e.g., incorrect or delayed delivery, quantity variance, and all other complaints about the conclusion and the execution of the delivery or service in question provided by us.

## 10 WARRANTY

**Warranty of Quality:** We are responsible only for those defects that already existed at the time at which the customer assumed risk.

At our request, the customer must return the rejected Goods in the original or equivalent packaging for testing of the complained-about defect at his own expense. Should the complaint have been justified, we will reimburse the customer for these shipping and transportation expenses.

Should defective Goods have been delivered, the customer is entitled to our choice of replacement delivery of Goods which are free of defects or rectification of the defect. Reduction in price and redhibitory action, as well as any claims for direct and indirect damages are excluded to the extent allowed by law.

Liability for defects presupposes that the customer has discharged his contractual obligations in full and the requirements of Section 9 have been fulfilled.

The conditions of this section apply to all instances of the delivery of defective Goods irrespective of the legal basis upon which the customer bases his claims.

**Warranty of Title:** The company's liability due to third party rights to the Goods existing at the time any individual transaction is concluded is, as far as legally possible, excluded.

## 11 LIABILITY

Unless differing explicit provisions exist in these Terms and Conditions, our liability with respect to the customer is limited to cases of intent or gross negligence.

In any case, our liability is limited to the value of the Goods or services in the particular individual transaction to which the customer's claim applies.

Liability for our auxiliary persons as well as in cases of force majeure is excluded. Our liability presupposes that the customer has properly fulfilled his obligations in Section 9.

Should the customer withdraw from the contract without good reason or, for his part, not fulfill the contract, we may demand 25% of the value of the order as contractual damages. We reserve the right to demand compensation for damages exceeding this amount.

## **12 FORCE MAJEURE**

Events that are unforeseen, unavoidable and beyond our control, e.g., insurrections, strikes, wars, fires, energy shortages, business disruptions at our own facilities or at our suppliers, actions of administrative bodies and hindrances due to national or international regulations, as well as difficulties in obtaining authorizations, in particular import and export licenses that prevent delivery of the Goods at the agreed upon date („Force Majeure“), extend the delivery period for the length of the disturbance and its effects. The customer will be notified of this delay in delivery.

After having notified the customer of the reason for the delay, we may at any time withdraw from the contract.

Should delivery be delayed for at least 3 months past the original delivery date and the customer can in good faith not be expected to take delivery, the customer may withdraw from the contract.

## **13 OFFSETTING**

The customer may offset our claims only with undisputed or legally binding counterclaims.

## **14 RESALE; RIGHTS TO THE DOCUMENTS**

The customer may resell the Goods for commercial purposes only together with the original documentation.

We and/or our licensor retain all proprietary and intellectual property rights to documents, drawings, models, cost estimates, and similar items („Documents“) we provide the customer in connection with this contract. These Documents must not be made available to third parties unless such permission can without a doubt be derived from the particular purpose of the contract between us and the customer.

## **15 DECONTAMINATION OF RETURNED GOODS**

We can only accept and work on returned equipment if the decontamination instructions have been adhered to

([www.ch.endress.com/dekontamination](http://www.ch.endress.com/dekontamination)).

## **16 FINAL PROVISIONS**

Should individual provisions of these Terms and Conditions be completely or partially invalid, the remaining conditions remain valid.

The place of fulfillment for all deliveries is our relevant supply depot, for payments the place of business of the contracting Endress+Hauser company.

Swiss law applies. The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply.

**Exclusive place of jurisdiction is the place of business of the contracting Endress+Hauser company. However, we also have the right to sue at the customer's place of business.**